

Date of decision : May 22nd, 2007

+ CRL.M.C. 4574/2005

G.D.GOYAL

..... Petitioner

Through Mr. Sameet Nandwani, Advocate

versus

STATE & ANR

..... Respondent

Through Mr. and Mr. O.P.Saxena, APP for State
Mr. D.D.Singh, Advocate for R-2**CORAM:****Mr. Justice S. Ravindra Bhat**

1. Whether reporters of local papers may be
allowed to see the judgment.? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

% Mr. Justice S. Ravindra Bhat (Open Court)

1. This petition under Section 482 calls for quashing of criminal proceedings so far as the present petitioner is concerned. He was summoned by order dated 10.10.2001 in a complaint proceedings initiated by the first respondent.
2. The complainant M/s Zuari Leasing & Finance Corporation Ltd. alleged that M/s Haryana Steel and Alloys Ltd. had issued several hundies to the tune of Rs. 62 lacs. The hundies were discounted and in terms of the settlement they were to be paid on the due date. M/s Haryana Steel and Alloys Ltd. had issued a cheque for payment of amount on various dates. In respect of one of the cheques, dated 12.10.1998, it was

alleged that when presented the instrument was returned on account of insufficient funds. Notice was allegedly issued and upon non-payment by the drawer, the complaint was filed.

3. In the complaint the present petitioner was not impleaded as a party accused. The relevant paragraph dealing with vicarious liability of the directors, who are said to have been instrumental in managing the affairs of the company are as follows :-

“3. That the respondent No. 2 to 6 are the Directors of Respondent No.1 and are authorised and liable for the acts of respondent No.1 company. Moreover the respondent No. 2 to 6 are concerned about and responsible for day to day running of the company and as such are liable for the same.

4. That the respondent No. 1 M/s Haryana Steels and Alloys Limited through Respondent No. 5 & 6 has approached the complainant for the purpose of discounting of Hundies. The respondent No.1 through the respondent No. 5 & 6 requested the complainant to discount the Hundies to the respondent No.1, to the extent of Rs. 62,00,000/- (Rupees Sixty Two Lakhs only).”

4. The trial court issued process and proceeded with the matter. Apparently along with the complaint a copy of the annual report of the accused company Haryana Steel and Alloys Ltd. was filed as Exhibit P-4. During the course of the proceedings the complainant caused an affidavit to be filed by way of evidence on 10.10.2001. That affidavit of the complainant's authorized representative stated *inter alia* as follows :

“3. That the respondent No. 2 to 6 are the Director/person incharge for running the affairs of the respondent company. Beside this Sh. Narindra Goel, O.P. Goel and G.D. Goel are the other Directors who were responsible for running the day-to-day affairs of the company. The copy of details as provided the respondent company and is responsible for the affairs alongwith Sh. O.P. Goel and Sh. G.D. Goel is exhibit P-4.”

5. Learned counsel contended that the trial court fell into grave error in not seeing that as

complaints originally framed and preferred, nowhere mention any role of the petitioner and that the requirements of Section 141 had to be strictly complied with. In such cases, that the complainant has to aver with specificity the role of the concerned director and as to how he was involved in managing the affairs, or being in charge of the affairs of the company.

6. Learned counsel relied upon the decision in *SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another*, (2005) 8 SCC 89; *Saroj Kumar Poddar Vs. State (NCT of Delhi & Anr.)* 2007(2) SCALE 36 and *Everest Advertising Pvt. Ltd. Vs. State, Govt. of NCT of Delhi & Ors.*, 2007 (3) Supreme 699. It was contended that the material sought to be relied on was also available, when the complaint was filed. The complainant deliberately chose not to implead the petitioner and proceeded against the other directors. In the absence of any details as to the role or involvement of the petitioner, being mentioned in the complaint it was not open to the court during the course of proceedings to have summoned him.
7. The petition was resisted by the complainant Mr. D.D.Singh, learned counsel submitted that the order of the trial court dated 10.10.2001 cannot be read in isolation and has to be seen along with Exhibit P-4 which clearly disclosed that Shri G.D.Goel the present petitioner was a director at the relevant time. All that the witness did was at the stage of his deposition, through affidavit to bring these facts to the notice of the court and the impugned order has to be construed as one under Section 319 in the circumstances of the case.
8. The law as to what should be the kind of pleading in cases concerning offences under

Section 138/141 of Negotiable Instruments Act was reviewed and re-stated in *SMS Pharmaceuticals's case* (supra). It has been subsequently followed in *Saroj Kumar Poddar's case* (supra) and *N.K.Wahi Vs. Shekhar Singh & Ors., 2007 (4) SCALE 188*. The court has ruled that in order to fasten vicarious liability the complaint has to specifically mention or attribute some role to the accused director. The judgment in *Everest Advertising's case* (supra) clarified the requirement by stating the specificity in all averments should include a statement that the accused director was involved in negotiation or was party to some agreement etc. that may be made in a general manner.

9. On a proper application of law declared by the Supreme Court in *SMS Pharmaceuticals's case* (Supra) as clarified in *Everest Advertising's case* (supra), it has to necessarily follow in the present case is that the complainant did not assign or attribute any role to the petitioner at any relevant time. It also emerges that at the relevant time the complainant was aware about Exhibit P-4 and deliberately chose to exclude the petitioner's name from the array of parties as an accused. Further para 3 of the affidavit of Shri Rohtash Kumar nowhere states or assigns any kind of specific role of the petitioner in respect of issuance of the cheque or his involvement in the transaction. In these circumstances the criminal proceedings as far as the present petitioner are concerned were clearly beyond jurisdiction.

10. In view of the above findings the petition has to succeed. It is accordingly allowed. The impugned order dated 10.10.2001 summoning the present petitioner is hereby quashed.

(S.RAVINDRA BHAT)

MAY 22, 2007
mm

JUDGE